

AMENDED IN ASSEMBLY JUNE 21, 2005

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE APRIL 13, 2005

SENATE BILL

No. 417

Introduced by Senator Ortiz

February 17, 2005

An act to add Section 734 to the Business and Professions Code, and to add Section 1371.371 to the Health and Safety Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 417, as amended, Ortiz. Payment of provider claims.

(1) Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Under the act, a plan is required to reimburse within a specified timeframe, an uncontested claim submitted to it by a provider.

This bill would require the department to review complaints by providers concerning the payment practices of a health care service plan or an entity with which the plan contracts for payment of claims, to determine if the practice constitutes an unfair payment practice, as defined. The bill would require the director of the department to assess a monetary penalty for the commission of an unfair payment practice.

(2) Existing law makes certain acts by health care professionals unprofessional conduct, including the failure of a physician and surgeon ~~or a dentist~~ to refund a duplicate payment he or she received for services provided to a patient.

This bill would, beginning on July 1, 2006, prohibit a hospital-based ~~provider~~ *physician, as defined*, from engaging in a pattern of billing

~~patients~~ *a patient* for services without first submitting a claim to ~~their~~ *the* health care service plan or health insurer, if the ~~licensed provider~~ *hospital-based physician* knows or reasonably should have known that the ~~patients~~ *patient* has health care coverage for those services from a plan or insurer. The bill would also require these ~~practitioners~~ *physicians* to notify a patient that the cost of services may be covered by the patient's health care plan.

The bill would make a violation of these provisions subject to the assessment of a civil penalty in an action brought by the ~~practitioner's licensing board~~ *Medical Board of California*.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 734 is added to the Business and
2 Professions Code, to read:
3 734. (a) A person licensed under this division who is a
4 ~~hospital-based provider of services~~ *physician* shall not engage in
5 a pattern of billing a patient for covered services if ~~the licensee~~
6 *he or she* knows or reasonably should have known that the
7 patient is an enrollee of a health care service plan or an insured
8 under a health insurance policy for amounts in excess of any
9 applicable copayments, deductibles, or coinsurance, unless the
10 ~~licensee~~ *hospital-based physician* has first billed the patient's
11 health care service plan or health insurer, and ~~it~~ *the plan or*
12 *insurer* has denied payment of all or part of the claim, or the plan
13 has failed to pay the claim as specified in Section 1371 or
14 1371.35 of the Health and Safety Code.
15 (b) ~~A person licensed under this division shall include the~~
16 *hospital-based physician shall include the* following in any
17 billing statement for covered services or statement for covered
18 services of charges that he or she sends to a patient ~~who the~~
19 ~~licensee~~ *whom the hospital-based physician* knows or reasonably
20 should have known is an enrollee of a health care service plan or
21 an insured under a health insurance policy if the charges are in
22 excess of any applicable copayments, deductibles, or
23 coinsurance:

1 (1) A prominent notice that the services being billed for may
2 be covered under the ~~patients's~~ *patient's* health care coverage
3 plan.

4 (2) A statement that the patient may contact the Department of
5 Managed Health Care HMO Help Center for assistance if the
6 patient believes he or she has been billed incorrectly and the
7 toll-free telephone number for the HMO Help Center.

8 ~~(e) A person licensed under this division who violates this~~

9 *(c) A hospital-based physician who violates this* section may
10 be cited and assessed an administrative fine pursuant to the
11 provisions of Section 125.9. No citation shall be issued and no
12 fine shall be assessed upon the first complaint against a ~~licensee~~
13 *hospital-based physician* for a violation of this section. Upon the
14 second and subsequent complaint against a ~~licensee~~
15 *hospital-based physician* for the violation of this section, a
16 citation may be issued and an administrative fine may be
17 assessed. Notwithstanding any other provision of law, the
18 remedy described in this subdivision constitutes the exclusive
19 remedy for a violation of this section.

20 ~~(d) A person~~ *hospital-based physician* who violates this
21 section shall refund to a patient all payments collected in
22 violation of the section.

23 (e) This section shall not apply to services provided to a
24 patient by *a hospital-based provider who is* an out of network
25 provider if the patient knowingly chooses to receive services
26 from an out of network provider.

27 ~~(f) A noncontracting provider who bills a health care service~~
28 ~~plan in accordance with the requirements of this section shall not~~
29 ~~be deemed to have an implied or actual contract with the health~~
30 ~~care service plan.~~

31 ~~(g)~~

32 *(f) The billing of a health care service plan or a health insurer*
33 *by a hospital-based physician, as required by this section, shall*
34 *not create an implied or actual contract with the plan or insurer.*

35 *(g) This section shall not affect the obligation of a health care*
36 *service plan or a health insurer to comply with an assignment of*
37 *benefits agreement between the enrollee or the insured and a*
38 *hospital-based physician.*

39 *(h) For the purposes of this section, "hospital-based*
40 *physician" means a pathologist, anesthesiologist, radiologist, or*

1 *emergency room physician, or a group of physicians providing*
2 *medical services at a hospital.*

3 (i) This section shall not affect any other protections under
4 state or federal law afforded to an enrollee of a health care
5 service plan; *or to an* an insured under a health insurance policy;
6 ~~or to a person who has any other type of health care coverage~~
7 ~~plan.~~

8 ~~(h)~~

9 (j) This section shall become operative on July 1, 2006.

10 SEC. 2. Section 1371.371 is added to the Health and Safety
11 Code, to read:

12 1371.371. (a) The department shall review individual
13 complaints from providers concerning the payment practices of a
14 health care service plan or of an entity that contracts with the
15 plan to pay claims submitted to the plan by providers. The
16 department may take an enforcement action based on a single
17 commission of an unfair payment practice, but shall prioritize the
18 complaints it receives based on their severity and seriousness.

19 (b) (1) Upon a determination that a health care service plan
20 has engaged in an unfair payment practice, the director shall
21 order the plan to pay to the provider up to three times the amount
22 that has been determined to have been inappropriately withheld
23 and shall impose any other remedy authorized under this chapter
24 sufficient to deter the future commission of an unfair payment
25 practice.

26 (2) For purposes of this section, an unfair payment practice
27 shall include a payment practice that results in any of the
28 following:

29 (A) A failure to correctly pay the claim as specified in Section
30 1371 or 1371.35.

31 (B) A failure to pay statutory interest and penalties as
32 specified in Section 1371 or 1371.35.

33 (C) A failure to comply with Section 1371.1, 1371.2, 1371.36,
34 1371.8, or 1395.6.

35 (c) A health care service plan may not delegate any statutory
36 liability under this section.

37 (d) The enforcement remedies provided in this section are not
38 exclusive and shall not limit or preclude a person from exercising
39 any other available criminal, civil, or administrative remedy.

(e) The penalties applicable under this section shall not preclude, suspend, affect, or impact any other duty, right, responsibility, or obligation under a statute or under a contract between a health care service plan and a provider.

(f) Nothing in this section shall authorize the department to establish rates or charges for services provided to subscribers and enrollees.

CORRECTIONS:

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